

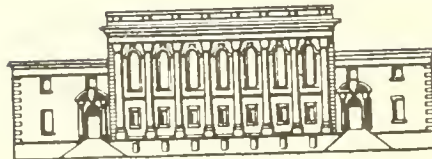
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The Protection and Preservation
of Cultural Property

Karol Ann Lawson

Senior Honors Thesis

April 15, 1981

✓ I pledge - Karol A. Lawson

To
my family,
with love

187733

My spirit is too weak - mortality
Weighs heavily on me like unwilling sleep,
And each imagined pinnacle and steep
Of godlike hardship tells me I must die
Like a sick eagle looking at the sky.
Yet 'tis a gentle luxury to weep
That I have not the cloudy winds to keep,
Fresh for the opening of the morning's eye.
Such dim-concieved glories of the brain,
Bring round the heart an indescribable feud,
So do these wonders a most dizzy pain,
That mingles Grecian grandeur with the rude
Wasting of old Time - with a billowy main -
A sun - a shadow of a magnitude.

"On Seeing the Elgin Marbles"
John Keats

But who, of all the plunderers of yon fane
On high, where Pallas linger'd, loath to flee
The latest relic of her ancient reign;
The last, the worst, dull spoiler, who was he?
Blush, Caledonia! such thy son could be!
England! I joy no child he was of thine:
Thy free-born men should spare what once was free,
Yet they could violate each saddening shrine,
And bear these altars o'er the long-reluctant brine.

But most the modern Pict's ignoble boast,
To rive what Goth, and Turk, and Time hath spared.
Cold as the crags upon his native coast,
His mind as barren and his heart as hard,
Is he whose head concieved, whose hand prepared,
Aught to displace Athena's poor remains
Her sons too weak the sacred shrine to guard,
Yet felt some portion of their mother's pains,
And never knew, till then, the weight of Despot's chains.

What! shall it e'er be said by British tongue,
Albion was happy in Athena's tears?
Though in thy name the slaves her bosom wrung,
Tell not the deed to blushing Europe's ears;
The ocean queen, the free Britannia, bears
The last poor plunder from a bleeding land:
Yes, she whose gen'rous aid her name endears,
Tore down those remnants with a harpy's hand,
Which envious Eld forbore, and tyrants left to stand.

Where was thine Aegis, Pallas! that appall'd
Stern Alaric and Havoc on their way?
Where Peleus' son? whom in Hell in vain enthrall'd,
His shades from Hades upcn that dread day
Bursting to light in terrible array!
What! could not Pluto spare the chief once more,
To scare a second robber from his prey?
Idly he wander'd on the Stygian shore,
Nor now preserved the walls he loved to shield before.

Cold is the heart, fair Greece! that looks on thee,
Nor feels as lovers o'er the dust they loved;
Dull is the eye that will not weep to see
Thy walls defaced, thy mouldering shrines removed
By British hands, which it had best behooved
To guard those relics ne'er to be restored.
Curst be the hour when from their isle they roved,
And once again thy hapless bosom gored,
And snatch'd thy shrinking Gods to northern climes
abhorr'd!

"Childe Harold's Pilgrimage" canto II, xi-xv
George Gordon, Lord Byron

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Part I

The protection of cultural property has been a major concern of national governments and some private individuals for at least a century. Despite this, it is only within the last few decades that conspicuous, widespread, public attention has been paid to the care of artifacts and works of art. This upsurge in interest is the result of several factors.

First, increased interest in ethnographic materials and artifacts which occurred in the 1960's encouraged collecting and led to an increase in their monetary value. This situation attracted the attention of legitimate and illegitimate art suppliers and dealers. The illegal and destructive activities of esterleros and tombaroli and pothunters have angered the victimized countries whose cause has been taken up by scholars, governments and agencies such as the United Nations.

Second, nationalistic pride has contributed in no small way to the ire of countries relieved of their cultural property by colonial powers, tourists, collectors and dealers. A growing realization of the importance of such property has encouraged countries to take account of, retrieve and preserve as many examples as possible.

Third, the increased monetary value and popularity of these objects make them an important tourist attraction and an important source of revenue. They have also become of great importance to private speculators.

The importance of cultural property lies in its identification with and of a particular society's character. Works of art represent a facet of the individual imagination, intellectual creativity, contemplation and expression. Archaeological artifacts represent stages of human development, the ebb and flow of cultures, their attendant technology, ideas, social structures and rituals. Both art and artifacts can be important sources of information about religions, political systems and general lifestyles. These types of cultural patrimony are important resources of a group, people or nation since they form a record of its intellectual, technological and artistic growth. A sincere, interested understanding of such objects can provide an individual not only with aesthetic enjoyment and knowledge but with pride and appreciation of his country's, people's and, even, humanity's achievements, aspirations and potential.

As concrete, physically observable symbols of a nation's or a people's aesthetic character and cultural identity works of art and artifacts embody strong emotional and intellectual associations. Because of their significance as indicators of cultural development and national character art and artifacts are among the most useful and welcome of ambassadors. Their exchange can encourage mutual understanding and education as well as appreciation and admiration of the parent culture, its artists and artisans. The great popularity of recent touring exhibits of the art of the age of Alexander, that of mainland China and the contents of King Tut's tomb is proof of that.

It is obvious that since such objects are so significantly tied to an area's cultural past, present and future improper or unpopular exchanges are of major importance and interest.

More important, perhaps, than the loss of the actual objects is the destruction of related information which could have increased the scholarly value of a piece tenfold. The location of an artifact at an archaeological site is of the utmost importance since its associations with other objects, soil strata and features can provide information on its age, uses, purposes and, so, about its makers, their lifestyle and culture. Similarly, the history of a work of art or historic building adds to our understanding of the artist's aims, his society's character and the period's artistic achievements. Illegal, ignorant or careless displacement and destruction therefore removes more than an individual object from public display; such action prevents related information from even surfacing.

This study will focus on general examples of loss and displacement of art works and artifacts in Mexico and Great Britain. These countries' courses of action and solutions to the problem will serve as examples of those generally followed by, respectively, Third and First world nations. Mexico's difficulties with the illegal antiquities trade are typical of similarly under-developed countries. The widespread neglect of historic properties and sale of collections due to economic difficulties which endanger the integrity of Britain's national heritage are found in other European countries and the United States.

This thesis will be primarily concerned with the legal protection of and moral obligations toward cultural property which are accepted as reasonable and desirable by those countries discussed. It will not deal directly with such related subjects as the chemical destruction, restoration and conservation of objects, protection from the ravages of war or encroaching development. Expert scientific care, protection from political or religious violence and salvage archaeology are important, distinct areas of interest; they merit individual consideration. They will, of course, occasionally be brought into the discussion since the information and insights they can provide are widely applicable.

Worldwide response to this issue of the protection of cultural property is hindered by a seemingly chronic lack of money and people to locate, buy, excavate, restore, research, catalogue and physically protect art works, artifacts and sites. The actions of unscrupulous dealers and collectors contribute to the problem as do warfare, urban development and economic situations. It is the consensus of most nations that cultural property is a significant resource and that its secure presence in its country of origin is important and desirable.

Two principal arguments invariably arise over this basic point. First, educators and students point out that cultural property should be freely shared so that mutual research and enjoyment can occur. Second, former colonies and contemporary developing nations which have been regularly relieved of their property feel that these objects should be returned. The response

of present owners, generally European and American collectors, is often one of insulted integrity and smug incredulity. They reason that since they were instrumental in protecting the objects from neglect and possible destruction their moral right to them is clear. Indeed, in many cases their legal right to them is also distinct. The logistical and social difficulties involved in a program of wholesale restitution would be complicated and confusing, if not impossible, to effect. Obviously, both sides in both arguments have valid points which should not be ignored. Just as apparent is the fact that there is and will be no one, simple solution.

Art works and artifacts are not simply intrinsically valuable. As cultural property they are important components of all human cultures since they give form to the ideals, understandings and thoughts of their creators. The creation and appreciation of art and artistic or decorative artifacts and monuments can be considered an integral part of being human. An interesting and provocative question concerning our awareness, appreciation and utilization of these characteristic components of human existence could shed new light on our understanding of our collective self-perception.

The study of art is thus useful to the anthropologist's investigation of a group's unconscious character. Likewise, a realization of this role of art as a mirror reflecting and to some extent forming the character of a society can enhance the art historian's appreciation of his subject.

It can be argued, quite convincingly, that the notion of free, fair - minded return of cultural property to its creators or their descendants and the conscientious, careful maintenance and overseeing of such heritage is a naive and impractical one. But it is not if one considers the effect widespread abuse will have on the intellectual growth of humanity. What a shame it would be if we were to be prevented access to "the universal language of world civilization...(the) creation and enjoyment of the arts"¹ due to the absence of international co-operation or national enthusiasm.

Such measures, however successful, will at least be instructive and helpful in reminding all scholars, collectors, dealers, statesmen and the general public that "Art is life..."² . Such a resource should not be senselessly squandered.

Part II

Contemporary Mexicans are noticeably proud of their Indian heritage. This is due in a large part to the Mexican Revolution of the early twentieth century "which required a re-definition of what was Mexican and a new visual image of the country"³. Although this seems to be an artificial construction of national identity it undoubtedly found and touched within the populace deep sympathies for and affinities with its artistic and cultural ancestry.

One of the most significant and interesting chapters of ~~the~~ ^{the} history is that of the Maya. This civilization developed in and occupied the Yucatan Peninsula and the area comprised of what are now known as the Mexican states of Tabasco and Chiapas, Belize, Guatamala, parts of El Salvador and Honduras. The terrain is of two principal types. The lowlands, in which developed the more sophisticated and important centers, are characterized by heavy rainforest and tropical grasslands. The principal areas within this region are: the Peten, often described as the heart-⁴land of classic Maya Civilization, Belize, the Yucatan Peninsula itself, the Usumacinta River valley and the Matagua River valley. The highlands consist of the drier sierras to the north and south of the lowlands.

Maya centers in the highlands seem to have developed more slowly than those of the tropical areas and have been found to have had some¹ connections with the Classic cultures of the Mexican plateau such as that found at Teotihuacan. The Maya

of the lowlands, on the other hand, were somewhat influenced by and influenced in turn classical groups on the Gulf Coast. Some lowland groups were influenced by contact with early Post-Classic societies of central Mexico. In this Tierra Caliente or 'hot land' are found the well known sites of Palenque, Tikal, Copan, Chichen-Itza, Uxmal as well as less familiar ones.

The Maya civilization is considered by many scholars to be one of the most highly developed of the pre-Columbian societies of the Americas. For this reason its character and social structure are almost as well known among laymen as they are among specialists. Maya social structure was based on a rigid theocracy and carefully organized military hierarchy. Agrarian villages were loosely but definitely associated with the ceremonial centers where temples and palaces of the priestly aristocracy were located. The peasant communities were expected to provide food and manpower for these centers but were otherwise independent of any centralized government.

Although the Maya adopted the characteristic pyramids, dated stelae, hieroglyphic script and the notion of a continuous calendar from their predecessors, the Olmecs, they developed and refined these to a unique degree. Their sophisticated systems of astronomy, astrology and mathematics continue to surprise and fascinate scholars.

The calendar formed the center of Maya social, religious and political life. It not only defined the limits and beginnings

of their group history, gave shape and purpose to their dieties, holy days and rituals, but conferred power and prestige upon the priests by revealing to them an awesome source of control over men and nature. Their notable dependence upon the calendar is clearly demonstrated in their characteristic obsession with records, cycles, dates and various units of time. Evidence of this preoccupation can be found on the large, monolithic stelae which bear dates of important events as well as those of the regular cycles and time periods. It is thought that the calendar's first use was as an agricultural guide but that through diffusion and gradual improvement came to be used for the making of prophesies and the ordering of rituals.

The Maya, proud of and fascinated by the supposed antiquity of their culture, established a zero point for the beginning of their world. Because of this, their subsequent careful measurements and their habit of recording these dates in stone the scholar's task of translating those into our modern, European system has been facilitated. An analysis of artistic styles, pottery stratigraphy and technological development has provided points of reference against which to match given dates. The span of Maya civilization is generally divided into the following periods: early Pre-Classic (2000-1000BC), middle Pre-Classic (1000-300), late Pre-Classic (300BC-250AD), early Classic (250-600), late Classic (600-800), Epiclassic (800-1000) and Post-Classic (1000-2000). A time of cultural decline is thought to have occurred about 900 to 950, after which the Toltec civilization gained more

influence. In the mid fifteenth century this began to disintegrate and small, rival groups began to form. Finally, around 1520-1540, Spaniards began to arrive in the area.

Maya art can be described as serene, conformist, formal, yet simultaneously exuberant, complex and imaginative. These qualities can be seen clearly in the aforementioned stelae which are the most characteristic product of Maya artists. The sculptural decoration on these free-standing slabs of stone is indicative of the dogmatic, overwhelmingly religious nature of all Maya art. The carvings are said to have been inspired by a "desire to propitiate the supernatural powers...(the art work) was not art in the eyes of the Maya...It was a prayer, a hymn to time...and an act of homage." ⁵ The stelae, which were erected at regular intervals to mark general past, present and future points of the calendar, important dates of a ruler's life and to record mathematical and astrological computations, are considered the principal form of artistic expression and, as such, the best examples of Maya sculpture.

Although the tall, irregular early stelae can be seen to have evolved into a more regular, almost square, shape, the principal decorative motifs and practices do not demonstrate similar significant development. Styles differed from center to center but those individual types remained relatively consistent over the years. In general, the relief sculpture is linear and static. There is little investigation of spacial volume. This could be due to a lack of metal tools but is probably more the result of

an enthusiasm for dense, elaborate decoration. Action is rarely depicted, although proportions of human figures are harmonious and obviously well thought out.

The main feature of the decorative scheme of the stelae is the large, central, idealized, ornate figure intended to represent an important official or ruler. This stiff symbol of political and religious office is typically surrounded by minor figures of retainers, slaves and prisoners, mythological creatures, masks, zoomorphic motifs, inscriptions, decorative bands and symbolic abstractions. The total effect is one of controlled, yet sincere, exuberance. The softly geometric, very dense and intricate plasticity of the forms could be thought to echo "the luxuriance⁶ of the tropical rainforest" .

Sculpted altars are similar in general pattern whereas monumental stone heads used to decorate various buildings are treated more plainly and broadly. They do retain, however, a certain sense of mystical fantasy. The bas-relief of the temples, ball-courts, secular buildings, squares and observatories is also fanciful, symbolic and possessed of a rather sinuous elegance.

Maya architecture is characterized by massive, blocky construction which gives the buildings an atmosphere of almost oppressive omnipotence. The flat-topped, terraced pyramids with temples at their tops, large palaces of government officials and other structures were carefully arranged in accordance with landscape features and were generally clustered around a series of courts. Architecture, like the decorative motifs, was given

symbolic meaning. "The pyramid is a visual symbol of the infinite distance between earth and heaven, between men and the gods."⁷

Pyramids, especially, were meant to be seen from the outside, preferably from below. This position, which would emphasize the building's size and height enforced its symbolic nature. They were also placed on large mounds of earth so as to further exaggerate the size and shape.

The Classic period (approximately 250-800 AD) is dated from the advent of the corbelled arch which allowed the construction of massive walls, roofs and facades. This vault remained the standard architectural technique until the introduction of pillars by the Toltecs around 975 AD. The lack of a true arch is reflected in the few small, simply built windows and doorways which pierce the thick walls but do not endanger their stability. Neither does Maya architecture demonstrate any consistent use of true, straight angles or of any other precise construction. Building methods progressed through the centuries from block masonry to that of a concrete core and dressed stone veneer.

Such architectural elements as roof combs, false fronts and flying facades in addition to painted stucco and bas-relief added vitality to the heavy buildings. This characteristic spirit will be better explained through an examination of some of the major centers of Maya civilization.

Of the many famous Maya sites Tikal, in the center of Guatemala's "El Petén" region, is perhaps the most widely known. Excavations, covering thus far about 6.4 square miles, have revealed

the remains of between 2500 and 3000 buildings, including six very large limestone temple-pyramids, one of which rises two hundred feet above ground level. This Classic center is thought to have been occupied continuously for 2000 years and represents one of the larger complexes of this sort in the Americas since its peak population was probably about 50,000. Tikal is the home of the oldest securely dated stele known to archaeologists. Stele number twenty-nine carries a date equivalent to our year 292 AD.

Artistically, Tikal is especially noted for its carved wooden lintels and elaborate roof combs which accent the excessively large and severe architecture. The overall character of these beautifully executed but stiff reliefs parallels the "unambiguous statement of conscious power" embodied in the architecture.

Palenque, located just west of the Usumacinta River valley and to the west of Tikal, provides further impressive examples of Classic Maya architecture and art work. Monuments here have been found to date from 630 to 810 AD after which the site was abandoned. Although there are no dated stelae at Palenque, inscriptions were included in the stucco and stone wall reliefs.

This is the location of the largest Maya tombs yet found. The Temple of the Inscriptions has yielded a richly carved sarcophagus, three-dimensional stucco heads and many small, exquisitely carved jade objects. Palenque is noted for its lovely bas-reliefs in its Temple of the Sun and Temple of the

Foliated Cross and modeled stucco on the piers of the palace's walls.

Situated slightly east of the Peten region, southwest of Tikal and southeast of Palenque is the Late Classic site known as Bonampak. Recently, several polychrome wall paintings dating from about 800 AD were found here. Although traces of similar paintings had been found at Palenque and Tikal, these represent our first significant opportunity to study such work. The practice of polychrome painting probably grew out of that of polychrome plaster and stucco reliefs.

The lively, realistic murals are important sources of ethnographic information since ^{they} seem to accurately represent several scenes of Maya ritual and daily activity. Among the scenes are representations of an assembly of nobles, a ruler presenting a child to that assembly, a battle, a robing scene, a dance (possibly around a human sacrifice), an orchestra with various percussion and wind instruments and the arraignment and torture of prisoners. The figures are more freely energetic here than those carved on the stelae or found in bas-reliefs.

In the late ninth century the Maya civilization suffered what scholars can only describe as a mysterious collapse. Around the year 800 about nineteen major ceremonial centers were flourishing in the Maya area. By the end of the century the number of those centers still erecting stelae and functioning on the typical sophisticated level had been reduced to three. Archaeologists have noted that in the following centuries the

remaining inhabitants continued setting up stelae and altars but placed them in atypical locations and positions. Traditions as well as religious knowledge obviously had been lost during the civilization's rapid decline.

Several explanations have been suggested for that decline but all come under the general categories: natural catastrophe, ecological disaster or major social disturbance such as invasion or revolt. A solution to the puzzle has been recently offered which combines elements of all those. It is called the overshoot mode⁹ by T. Patrick Culbert who reasons that rapid population increase and overtaxed agricultural production resulted in an general inability to respond to these emergencies. Increased incidence of malnutrition and disease and political competition⁹ were further results of this extremely stressful situation.

The general vitality and special character of Maya art suffered as the civilization's intellectual and artistic traditions were forgotten or corrupted. The work of the now misguided artisans has none of the self-assurance or excellence of craftsmanship that were the hallmarks of Maya art. Shoddy workmanship and a vagueness of conception characterize the final centuries of Maya art and architecture.

Part III

The integrity of Mexico's Maya art works and architecture as well as that of the pre-Columbian, pre-historic, primitive or otherwise indigenous cultural property of similar nations is endangered by far more than shoddy workmanship today. In the fall of 1969 it was reported that "museums and collectors everywhere now generally acknowledge that the two most open areas for acquisitions are contemporary and pre-columbian art"¹⁰. Needless to say, the most frequent methods involved in getting those pre-columbian objects to market are illegal. Such activity is of major concern to Mexicans and their neighbors who share the spiritual and physical remains of the Maya civilization.

From about 1960 archaeologists and other scholars have noticed a drastic increase in the number and scope of incidents of vandalism and looting throughout Meso America. Such destruction is detrimental to archaeological excavation and research because it alters or destroys vital evidence as well as to an area's tourist trade since visitors do not come to see crushed or non-existent artifacts. In a more abstract sense it is harmful to the artistic and intellectual development of the country in question. Unfortunately, the problem has been and still is fueled by the overly enthusiastic acquisitions policies of American and European museums. Private collectors, too, are responsible as they respond to a worldwide passion for ethnographic materials, ancient art and exotic archaeological artifacts.

The most frequent victims of the looters are the magnificent

stelae discussed above. Those, the various bas-reliefs, some other architectural decoration and the rare frescos are all under attack. Most Maya complexes are located in dense tropical rainforest, in sparsely populated and largely inaccessible areas. Relatively few have been adequately excavated and researched by trained professionals. Probably only a small percentage of the sites have even been reliably located. Only about one quarter of the hieroglyphics used to record dates and form inscriptions have been translated.

Looting must begin with local people and, although most of the chicleros, the men who collect chicle for chewing gum, in the Yucatán-Petén area are protective of the Maya sites and co-operate happily with archaeologists, a growing number are involved in illegal activities at the Maya complexes. They are useful mostly as guides since they literally stumble across the ruins in the course of their work in the jungle. Strict national laws prohibiting the unauthorized sale of antiquities cause them to seek out middlemen if they wish to make a profit from their discoveries. Local guerrillas and grave-robbers also serve as informants for the middlemen. These people are contacted by so-called 'runners' from the United States or Europe who buy the artifacts and ferry them into the showrooms of either unscrupulous or careless dealers.

In the past the collection of relief and stelae fragments was facilitated by the use of hand-saws and fire which were used to saw or crack relatively thin slabs off the face of a wall

or stele. In the process, of course, nearby inscriptions, carvings, even frescos were cracked, mutilated and destroyed. Now the illegal antiquities trade has become so organized and sophisticated that chainsaws, bulldozers, explosives, acids and various types of power equipment are used to fragment the heavy stelae and walls. A more thoroughly destructive method became popular about 1970 and has largely replaced the previous, relatively informal one.

A typical 'operation' following this method would follow these general steps. An entrepreneur of sorts will locate, research, photograph and map a particular site. He approaches various European or American collectors for money to subsidise his proposed expedition and offers in return a portion of the material recovered. They generally respond enthusiastically. The site is attacked for approximately one to two weeks after which anything of the slightest artistic or archaeological interest will have been retrieved and removed from the area. The objects are dispersed to the investors or make their way to the international art market, museums and dealers. Guns, too, have become a regular piece of the thieves' equipment and the murder of local pothunters, guides and archaeologists is not an unheard of occurrence. The situation has reached epidemic proportions, small, little-known sites as well as larger, more familiar ones are being looted.

This is not due to a lack of comprehensive legislation or official concern but rather to a lack of manpower to protect and thoroughly investigate the sites and an economic climate

which encourages local farmers as well as wealthy foreign collectors to cash in on the supply of pre-columbian antiquities. Mexico's Federal Monuments Law of 1972 is intended to cover all cultural property. All known examples are inventoried and registered and art or antiquities dealers are required to register all objects in their possession. The export of objects listed on the national register is prohibited, although objects may be loaned or exported temporarily. As of 1973 penalties for offenders consisted of fines up to four hundred dollars and two to twelve years imprisonment. Permits are required for any export or excavation. These are tailored to fit individual cases and are generally granted only to scientific institutions. Expeditions must be accompanied by a member of Mexico's National Institute of Anthropology and History.

Guatemala, which contains many important Maya sites, requires looters to pay a fine equal to the value of the object or objects stolen or serve four years imprisonment. This country's Decree for the Protection of Monuments of 1947 (modified 1966) protects all cultural property and prohibits the permanent removal of any of it.¹¹ Private groups formed around 1970, Operación Rescate and Asociación Tikal, have attempted to save some areas through salvage archaeology in this country.

In the United States, which is the ultimate destination of much of this stolen property, it is not illegal to buy such artifacts if they are obtained outside their country of origin. In 1971 a treaty was ratified between Mexico and the United States

concerning this situation. The Treaty of Cooperation Between the United States of America and the United Mexican States Providing for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties formalizes an agreement between the neighbors to encourage systematic archaeological excavation, research and exploration, to deter illegal excavations and theft of these properties, encourage and aid the exchange and exhibition of cultural property between the nations and "to permit legitimate international commerce in art objects."¹² The treaty also states that each country will aid the other in any attempt to regain and return such property which has been stolen. As the closest, most voracious customers of the looted art Americans have quite a bit to answer for. This agreement is at least a step in the right direction.

Archaeologists and others have suggested several further steps to discourage such enthusiastic patronage of dishonest dealers. Heavy taxes on the importation and sale of antiquities might help to stem the tide of pre-columbian objects. The Internal Revenue Service could refuse to accept as tax deductions antiquities donated to charities which do not carry proof of legal export from their country of origin.

In October 1972 a federal statute was drawn up, to be enforced by the United States Customs Service, which would prevent the entry of listed objects unless they are accompanied by certificates of approval from the country of origin verifying that they were legally excavated, bought or sold and exported. This was in response

to recommendations of the United Nations Educational, Scientific and Cultural Organization's (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property which was proposed in 1970.

Apparently that statute has not proved satisfactory, for a bill was recently introduced (1978) in Congress which was intended to specify the United States government's proposals for enforcing those recommendations. The action raised a furor among art dealers. The president of the American Association of Dealers in Ancient, Oriental and Primitive Art commented that the State Department officials were "not concerned with the cultural well-being of museums and collectors in the United States. They want this legislation to use as bargaining chips." A prominent New York dealer called the legislation a "noble experiment" but seems to have been rather supercilious about the entire issue. Most dealers and other similarly involved individuals reason that the United States and European nations should not be penalized since 1) they and their clients can preserve the objects far better than the countries of origin, 2) such legislation cannot stop the pillo¹³ge totally, 3) American and European collectors and museums should be allowed to obtain their fair share of the material and 4) these nations have provided most of the trained scholars and scientists who have explored, excavated and researched in the looted areas. The State Department diplomatically offers that it merely wants the United States to be a responsible member of the international community. Scholars, of course, want to know that their countries

are not subsidising the violence and destruction they are so aware of.

Specific examples of mutilated stelae, frescos or reliefs are difficult to identify for the non-specialist since they are known principally by numbered designations, their artists are anonymous and in-depth knowledge of their original sites is not widespread.

In 1970 it was reported in Smithsonian Magazine that the Maya site of Naranjo, just southeast of Tikal, in Guatamala, had recently been attacked and looted. Several of the fragmented stelae were left at the site apparently because they had been too seriously defaced or shattered. Some of the other fragments were recovered by the Guatamalan authorities. One stela was found in a Houston warehouse; Guatamala sued for its return. Another was located in the collection of the City Art Museum of St. Louis. Others are probably scattered throughout public and private collections.

Objects listed on Mexico's national register are by no means safe from the depredations of thieves. Indeed, clearing and reconstruction of an area make their work easier. Archaeologists regularly return to sites they or colleagues have previously excavated to find that stelae and reliefs have been carried off. Examination of rubbings, line drawings and photographs is of some help for artistic and archaeological analysis but is, obviously, inadequate. Infrequently, archaeologists are able to reconstruct shattered and abandoned stelae but this is as frustrating as it

is difficult.

In recent years public and professional opinions concerning the ethics of a uisition have aroused some interest in returning obviously stolen objects. Museums and collectors are frequently reluctant to do so since they represent a considerable investment and were, generally, bought without knowledge of any illegality. In an effort to recoup his financial loss a New York dealer in 1972 offered to sell to Guatamala the lower part of a stelae stolen from a site known as La Amelia. The country indignantly refused, of course.¹⁵ Many American museums have been amending their aquisitions policies to require definite information on the provenance of any object offered them. Such action by the Smithsonian Institution, the Fogg and Peabody Museums of Harvard University are notable and encouraging evidence of concern.

The problems encountered by Mexico and its neighbors in protecting their Maya heritage are similar to those found in other developing countries just as their solutions are applicable to the others' situations. Their collective anguish over the destruction was echoed by the Director General of UNESCO, Mr. Amadou - Mahtar M'Bow, in a 1978 editorial. He wrote, "The men and women of these countries have the right to recover these cultural assets which are part of their being."¹⁶ That they have the right no thoughtful person will deny. But do they have the wherewithal, the judicial, economic and social means to monitor and control the fate of their cultural property?

The answer must be negative since Mr. M'Bow directed the

majority of his suggestions and requests to people and institutions of developed countries and was concerned almost exclusively with the return and restitution of such property. He addressed European and North American governments, media, cultural organizations, universities, libraries, museums, authors, collectors, restorers, historians and educators and requested that they

- 1) return or prevent the entry or sale of stolen cultural property,
- 2) upgrade and maintain acquisitions policies,
- 3) publicize the abuse and destruction of cultural property and
- 4) educate the public as to the importance of such heritage to the nations deprived of it.

Since the middle 1960's UNESCO has sponsored, suggested, examined and recommended various means of preventing illegal sale of cultural property, encouraging its fair return and organizing educational programs. This organization's principal tactic is to arouse the guilt and sympathy of its wealthy, developed member states and so diminish the market for stolen antiquities. Apart from suggestions of artistic, intellectual and social worth United Nations resolutions have also stressed the political implications of any return of cultural property. It was reported in the UN Monthly Chronicle that "prompt restitution...was calculated to strengthen international co-operation inasmuch as it constituted reparation for damage done."¹⁷

Although it has taken more than a decade for the developed countries of Europe and America to respond to their neighbors' and former colonies' requests most have been willing to cooperate.

Australia has been making arrangements for the return of several artifacts to New Guinea. Belgium contributed over one thousand Central African ethnographic and artistic objects to the fledgling museums of Zaire. The Netherlands has returned artifacts and provided aid in tracking others down to Indonesia. The list is growing. The number of exchanges and loans between national museums is also growing.

The afflicted nations have also been becoming better able and willing to protect their heritage. Economic development provided the impetus for a program sponsored by the Central Mortgage Bank of Peru which has been restoring old buildings and putting them to use as hotels and shops throughout Peru. The curator of the Museum at Adana, Turkey was buying illegally excavated objects from peasants and professional robbers in the early 1970's so that the museum could have first choice of the booty. He promised not to prosecute his suppliers in return for their cooperation. The laws of the country might have been bent a bit, but at least the museum has acquired a fairly good collection. Other countries have been attempting to educate their citizens and so instill in them sufficient cultural pride to discourage grave-robbing and looting as a career.

Thefts and plunder, however, continue unabated. In 1973 Time reported that 7,000,000 dollars worth of antiquities "evaporate from sites in Egypt, Turkey, Greece, Lebanon, Israel and Italy every year. Treasure worth millions of dollars more is plundered from Latin America and the countries of Southeast Asia. Some

3,000,000 dollars in booty originates in Italy alone"¹⁸ There is absolutely no reason to assume that these figures have decreased or stabilized.

Feasible solutions to the problem of antiquities theft are few. It is obvious from the previous discussion that the formulation of new laws can only serve to further confuse the situation since they hamper the legitimate excavation, export, import and sale of cultural property and can generally be circumvented. Most existing antiquities laws are adequate and need only be fully, carefully and conscientiously enforced. Modernization is appropriate in some cases where the present laws are outdated.

The surest answers are those advocated by the United Nations and UNESCO: widespread public education, free exchanges and loans of objects by museums, return of objects to their countries of origin, the pursuance of consistent and ethical acquisitions policies and, finally, international cooperation. The creation of a general fund "to enable each country to protect its¹⁹ treasures" through improved policing, adequate conservation and thorough excavation has also been proposed. A similar fund was been suggested in order to provide poorer countries with the financial means to buy back objects, in the event that they have none to exchange, by a group of experts from the International Committee for Museums of Ethnography of the International Council of Museums in 1977.

Education must precede any such action, however. It is

imperative to educate the world's public and private collectors for they are the principal consumers of the pirated property. No formal programs specifically aimed at this aspect of collecting are popular or widespread, although interest in ethnographic materials is making more people aware of their importance to the country of origin. The majority of European and American collectors have been slow to realize the importance of the artifacts and art works of their neighbors because they have just recently recognized the importance of their own cultural property.

Part IV

The protection and preservation of the antiquities and art works of Europe, specifically those of Britain, are subject to quite different circumstances than those found in Mexico and the countries of Latin America, Africa and Asia. Britain is wealthier and so can afford more comprehensive protection for its archaeological sites and historic monuments than those nations. Further, the art works Britain attempts to keep within its boundaries are not illegally obtained, for the most part. Thus, Britain's concerned citizens must depend more on public preservation societies and specific government agencies than on export laws and fines for illegal excavation. Different tactics are required to protect and restore a country house endangered by high taxes and new roads or to buy back a masterpiece sold to a foreign collector than to arrest looters or request the return of stolen artifacts.

Due to the higher level of education and greater wealth found among Britons, North Americans and Europeans they more readily organize and operate preservation societies, fund raising campaigns and voluntary protection programs. The fact that the population of Britain is more evenly distributed is also significant. Unlike the jungles of the Yucatan Peninsula or the Peten region, the hills and fields of Britain are not remote or virtually deserted. Large-scale looting operations would not go unnoticed in a farmer's pasture.

Britain's campaigns to retrieve a work of art or its indignation

at a proposed sale are more respected by the world community than those of a developing nation. Fairly or not, anguish over the loss of a masterpiece by Britain or a similar nation has been generally considered more important than an equal loss by a poorer, less influential country. Thus, Britain has not had to depend on the help of the United Nations or charitable neighbors to protect its heritage. It has relied on the enthusiasm of its citizens and the financial strength of its own government.

The principal problem western European countries have had to face is the sale of art works to foreigners. The dispersal of collections and demolition of historic buildings form the primary threat to the integrity of their patrimony. The archaeological sites of Europe are well protected and maintained in comparison to those of Mexico and other countries just discussed although, of course, they suffer some vandalism and looting. A difficulty lies in the clear identification of, for example, 'British', 'French' or 'German' art. Outcries are heard as much when a famous work by a French or Italian artist is about to leave Britain as when one by an Englishman is. Does the length of an object's stay in the country determine its eternal ownership?

In early December 1980 it was reported that Leonardo da Vinci's Codex Leicester was sold through Christies in London by a British aristocrat to Dr. Armand Hammer, an American collector. Interested Britons objected to the sale since they felt the manuscript should be kept in Britain as an important item of the national collection. Even in the event that the book was legally acquired

by its English owner, it should be considered a monument to Italian artistic and scientific genius and, if anything, returned to that country's collection. It was suggested that the Codex Leicester be displayed part of the year in America and part in Britain. The new owner refused, to the consternation of those interested Britons. They should have remembered that it had not been shared previously with former owners or with its country of origin.

And what of the Elgin Marbles? They are treasures without doubt. They were also clearly saved from destruction by Lord Elgin. Their characterization as national treasures of Britain is a frequently contested point.

Defenders of Lord Elgin list the indifference of Greeks and Turks towards the statues and the dangers posed them due to that as sufficient reason and justification for his actions. They point out the destructive, acidic smog of modern Athens and the inadequate protection provided the monuments of the Acropolis to support their refusal to return the marbles to Greece. The responsibility for the care of these statues which Britain accepted is seen to establish the country's moral right to them.

Detractors of Lord Elgin scoff at his assumption that nineteenth century Greeks were indifferent to the fate of the Acropolis' sculpture. They also deny that Elgin had a legal right to carry off the marbles since the permission to do so was given by a Turkish government. Finally, they claim that, even if Lord Elgin did save the sculptures, they belong in their country of

origin. These viewpoints are clearly stated or implied in the poems placed at the beginning of this thesis. The benefits of having such treasures available for one's enjoyment and the pain of giving them up are poignantly put before us.

Europeans have been actively monitoring and protecting their cultural property through political and judicial channels for over a century, albeit not always with the same sense of fairness one considers appropriate today. At the Congress of Vienna of 1815 France was required to return the plundered art works of the Empire's defeated neighbors. Article fifty-six of the Annex to the Fourth Convention of The Hague of 1907 stated that "any seizure or destruction of, or intentional damage to, historical monuments, works of art and science was prohibited and should be prosecuted."²⁰ Article two hundred and forty-five of the Treaty of Versailles arranged for the restitution by Germany of art works taken from France as far back as the 1870 war between the two countries. In 1943 the United Nations declared its right to ignore or declare void any transfers of property made during wartime by enemy governments. Lastly, in 1954 a convention was signed at The Hague concerning the protection of cultural property. Since then the United Nations and UNESCO have largely taken over the business of protecting national heritage. Western Europe is also the home of such agencies as the International Council of Museums and the International Center for the Study of the Preservation and Restoration of Cultural Property.

Except for those of the agencies just mentioned these pro-

clamations, treaties and conventions are all conspicuously concerned with wartime protection and post-war arrangements. They do not delve into moral or ethical questions or the limbo of aesthetic evaluation. They do not consider objects of cultural heritage as anything other than property. With such reasoning in mind the status of the Elgin Marbles would be clear. They would be understood to belong to the country of the man with whom they were allowed to leave Greece by the Turks. There would be no room for the claims of modern Greeks who see the marbles as an important part of their cultural history. As late as 1945 an author wrote, "It is abundantly clear that (the Elgin Marbles) should never be re-integrated on their original sites. Those few which Lord Elgin did not remove have...been allowed to deteriorate into utter wreckage..."²¹ The tone is patronizing at best, but at least the author had no doubts about the proper course of action.

The present situation found in Britain will serve to illustrate the awakening of European anxiety over the peacetime plight of art works, monuments and artifacts and, by implication, the vitality and completeness of a nation's artistic character and intellectual self-awareness.

According to Godfrey Barker of London's Daily Telegraph "the national heritage in Britain is clearly endangered... our policies for its conservation are breaking down."²² In specific reference to the destruction of the English country house a magazine editor warns that "Today we are witnessing the dismemberment of collections, the vanishing of much of the national

heritage - intellectual as well as material - and the passing of a way of life."²³ Clearly Britons are very worried about the maintenance of their fine arts and monuments in the face of an adverse economic situation which is causing the sacrifice of many fine collections, buildings and individual objects.

The English country house figures prominently in this picture of destruction and loss. As the homes of British collections, as symbols of a particular lifestyle and social history, they are the principal focus of preservationist programs and public enthusiasm.

The country has formed the core of the rural community from the earliest periods of British history. Whether castle, manor or true mansion it and its inhabitants have figured prominently in the social, religious and economic life of the adjacent vill age or town. It has been suggested that the attitude of civic responsibility and noblesse oblige colored by a true respect and affection for rural citizenry found among the British gentry due to this arrangement "spread beyond the confines of Park or Hall, as far as Westminster and Whitehall;...English political life has had a 'country house' flavour very much its own."²⁴ Whatever the validity of that statement it is certain that country houses have played significant roles in the lives of many of Britain's artistic, literary and political figures.

One author refers to such houses as "cradles of the great" and places them in three categories: houses created by great men, houses which became the retreats of great men and houses which

²⁵
 created great men. Robert Walpole, Henry James, Rudyard Kipling, Shelley, Lord Byron, Wordsworth, Tennyson and numerous others are said to have benefited from such contact. The landed aristocracy also opened their estates to the architects, artists and authors they patronized. Inigo Jones, William Kent, Turner and Pope are among that number. Clearly "There can be no doubt that much of English talent could never have found maturity without the patronage and leisure that was the gift of the country house."²⁶

The country house can be considered to be among Britain's finest and most significant artistic products. The various styles of architecture, the lay-out of gardens, interior and exterior details and decoration have consistently echoed the development of the whole of British art. In addition, the decoration, construction and collections of the country house represent to many experts and connoisseurs a "synthesis of European taste, art and crafts-²⁷manship rarely to be found in houses on the continent." These various styles and combinations are a hallmark of Britain's enjoyment of the fine arts. Thus, as much as the stone stelae of the ancient Maya, English country houses can serve as the symbols of a country's artistic heritage. The disappearance of the better examples, therefore, is equally unfortunate.

In the middle of the nineteenth century the country house seemed a secure and permanent fixture of rural English life. At this time life in the houses had reached extremes of opulence and luxury. The agricultural depression of 1873, however, marked

the beginning of the end. Estates and parts of estates were sold and fortunes capable of supporting these complexes were diminished. World War I deprived the houses of owners and their heirs and so hastened the end of over four hundred country estates. During the years 1920 to 1955 occurred what has been²⁸ described as "the country house blitz" during which hundreds of houses were demolished or fell into ruin. The past thirty years have witnessed the loss of countless houses due to unbearable taxation and an acute shortage of domestic help.

Several examples will illustrate the problems encountered and measures taken by the owners of endangered houses. The owner of a country house is very often not only responsible for that building and its grounds but for a small village as well which has remained closely associated with and dependent upon the 'big house'. The village of Great Barrington in Gloucestershire has been allowed by its owner to deteriorate to an alarming and, quite possibly, irreparable state of ruin. The majority of its farm houses, cottages and manor houses are roofless, windowless and their walls are cracking or tumbling down. The small community is literally disintegrating.

Although local preservation societies as well as government agencies could have forced the owner to carry out or allow repairs and restoration they have not done so. In the late 1960's the Society for the Protection of Ancient Buildings made some attempts at conservation. "What is clear is that there has been reluctance by many officials to interfere with the local owner's

actions because they understand... his attitude that he would rather his vill_ age decayed and disappeared than become conserved, restored...tarded up for a twentieth century commuter civilization that he probably dislikes intensely." ²⁹ There are obviously worse things than dignified rot.

Doddington Hall, Doddington, Lincolnshire, which is a late Elizabethan house, is in better repair due to careful economic planning and timely restoration. A grant from the newly-created Historic Buildings Council in the early 1950's allowed for roof and structural repairs. In 1968 the owner's request for another grant from that council for a thorough program of repairs was turned down. In 1974 the owner and his family moved into the house on a permanent basis and began to encourage public visiting of it. In the middle 1970's application was again made to the Historic Buildings Council for funds for further structural repairs and a ninety per cent grant was obtained. At the present the house is supported by estate income, the owner's capital reserves having been largely used up. Income from woodlands, let land and visitors to the house seems to be fairly secure. Any emergencies, however, will have to be looked after by government agencies.

Aynhoe Park in North_amptonshire is an example of an innovative solution to the problems threatening large country houses. It is now maintained by the Mutual Households Association and has been converted into apartments for retired or semi-retired people. Repair, restoration and conversion of such a house are funded by

by private donations, local preservation societies and councils, the Department of the Environment and the residents themselves. The residents also take an active part in the care of the grounds and gardens. The arrangement seems to be a happy one and the thirty occupants of Aynhoe Park "seem sensitive to and delighted by its environment and architectural strength."³⁰

Demolition has saved Watlington Park, Watlington, Oxfordshire. In 1954 the owner had about two thirds of the building, which consisted of nineteenth and twentieth century additions, removed thus reducing the house to its original, eighteenth century size. Income from the estate is sufficient for the upkeep and insurance of the house and grounds now that they are a more manageable size but provides the owner with no excess capital.

Nunny Kirk Hall in Northumberland has been leased to a school for dyslexic children. In the early 1950's the owners began selling farms associated with the estate to raise funds for repairs and renovation. By 1976 the greatly reduced estate could no longer provide the capital necessary for adequate maintenance so the house and some land was offered for sale. The owner received no offers, although the house is in fairly good condition, since it is large, difficult to staff and quite isolated.

It is clear that, for the most part, the owners of these country houses should be commended for their efforts to preserve and protect their property by the most practical and sensible means available. There are numerous other examples of similar

efforts and plans just as there are many cases of neglect and disinterest. It is clearly understood by the individuals and agencies involved that not every owner can afford restoration or even wishes to undertake it. Likewise, it is understood that not every country house is worth going to great pains to save. It should be realized, however, that to preserve the authentic character and appearance of the country house as an institution many of these average examples must be maintained.

Despite widespread complaints that there is insufficient public, private or governmental interest in the preservation of British architectural or historical monuments one finds a remarkable number of societies, councils and commissions concerned with just that. Indeed, such groups have a fairly long history.

Members of the Society of Antiquarians were instrumental in establishing the Conservation Fund in 1855 "to finance the formation of a catalogue of existing monuments and buildings"³¹ The Society for the Protection of Ancient Buildings (1877) is still going strong and is still concerned with the preservation and care of buildings of historic or architectural interest. It prepares reports on endangered or deteriorating buildings, keeps an index of houses threatened with demolition and provides potential buyers with information on those. The Ancient Monuments Protection Act of 1882 was suggested by John Lubbock of the Society of Antiquarians.

The National Trust for Places of Historic Interest or Natural Beauty was set up in 1895 and a Royal Commission on Historical

Monuments was organized in 1908. The National Trust's 'country house scheme' which was begun in the late 1930's "enables the Trust to accept a house of outstanding architectural or historic interest together with a capital sum, or income-producing land, sufficient to provide an endowment for upkeep...the Trust can allow for the donor and his heirs to continue in occupation."³² This plan is popular since it preserves the home-like atmosphere so necessary for the vitality and interest of such a building. The Royal Commission on Historical Monuments is still a viable member of this group of agencies, its principal activity is the recording of all buildings and earthworks built before 1800 and some specially selected structures built later.

The Arts Council of Great Britain and the National Land Fund were both set up in 1946. The latter is entrusted with the acquisition and preservation of properties of national interest while the former serves as an advisory body.

The year 1953 saw the passage of the Historic Buildings and Ancient Monuments Act and the subsequent establishment of the Historic Buildings Council(s). This act was "the first to make specific financial provision for the repair and upkeep of historic buildings...including...country houses."³³ The associated councils are advisory bodies which provide information, advice and recommendations to the government agencies concerning grants and loans for repair, maintenance, publicity (if the building is open to visitors) and enhancement of buildings of significant architectural or historic interest, their contents and grounds.

The councils are composed of town planners, members of parliament, architectural historians and various other concerned individuals. Grants are recommended if, among other requirements, sufficient public access to the house and grounds is provided.

The Department of the Environment contains several offices concerned with preservation of important structures. The Planning and Ancient Monuments and Historic Buildings Divisions and the Historic Buildings Directorate are most significant. The Directorate compiles lists of buildings according to their age and architectural or historic value and interest. Listed buildings are accorded certain protection, are eligible for various government funds for repair and maintenance and are generally well looked after. All buildings pre-dating 1700, most from the period 1700-1840, a carefully selected number from the years 1840-1914 and a very few dating 1914-1939 are listed. The Town and County Planning Acts of 1944-1947 initiated the practice of listing especially significant buildings.

Private, voluntary organizations are also abundant in Britain. Most are concerned with buildings of a certain period or style. They include: Council for the Protection of Rural England, the Civic Trust, Ancient Monuments Society, the Georgian Group, Victorian Society and Pilgrim Trust.

In addition to such societies several studies have been carried out to provide information and assessment of the situation. The Gowers Report of 1950 is the best known of these. "Her Majesty's Report on Houses of Outstanding Historic or

Architectural Interest" produced by a specially appointed committee chaired by Sir Ernest Gowers resulted not only in the creation of the Historic Buildings Council mentioned above but offered the proposal that "designated houses should be preserved as private residences, occupied preferably by the families connected with them."³⁴ The committee proposed that, for preservation purposes, country house owners would be allowed relief from income tax, surtax and death duties on the house, its contents and land due to repair, restoration and maintenance costs. Although the Gowers Report was a far-sighted and sensible document its proposals are still debated.

Despite these many agencies, societies and committees "the determined owner can do what he will."³⁵ In other words, if he does not care to have his house saved from the depredations of the environment, simple neglect or threatening development, no group or individual can force him to do otherwise. The village of Great Barrington, Gloucestershire, discussed above, is a good example of this fact.

On the other hand, an owner often cannot receive urgently needed funds if his house or circumstances do not fit all the requirements of the government councils or private preservation societies. Not every deserving house can be saved. There are many mistakes made and funds misused or not used at all. Many critics of Britain's handling of the problem claim that the records of listed buildings are of little practical help, that tax relief and grants for owners are too slowly given and that the system is

characterized by confused apathy. They point out that it has been estimated that from 1945 to 1974 about seven hundred country houses were demolished or let deteriorate into irreversible ruin. Houses' collections, libraries and works of art in general are also said to be endangered by the government's listlessness and avarice. Heavy inheritance taxes are often the cause of a collection's dispersal.

The often provincial collections associated with these houses are strongly defended by preservationists and historians. Furniture, family portraits, tapestries, porcelain, carpets, objects d'art and libraries are an integral part of the character of a country house. They have generally been collected in the course of a 'grand tour' so popular during the ~~18th~~ and early centuries and throughout the careers of the owners. It is realized that "the way in which a collection of pictures has grown up will illustrate the changing social standing, the fluctuating economic fortunes of a family, a group of families...a social class." ³⁶ Such objects are easily sold, however, and have proved during the past century a ready source of money for the payment of taxes or living expenses. As pressures have become greater upon the owners of country houses to keep and preserve them intact, the collections have served as desperately offered sacrifices. Similarly, finer, better-known works of art are sold by their owners to pay expenses.

Recently several pieces of the silver plate of Rochester Cathedral were offered for sale by the clergy there. Public

protest convinced them to return it to its cabinets but the incident still raised several worrisome issues. The ease with which the plate could be "put at risk raises questions about the conservation of cathedral treasures that should not be allowed to rest"³⁷ wrote one concerned author. The fact that the Church of England could prove so irresponsible about its possessions offered a disturbing parallel to the behavior of many aristocratic collectors.

In 1978 the Warwick Vase, a very large, second century AD, Roman piece, was sold to the Metropolitan Museum of Art in New York. Due to the influence the vase had exerted on the development of British decorative arts after its excavation and removal from Italy in the late eighteenth century, it is considered to be "an important document in the history of British taste and patronage."³⁸ The departure of such paintings as Titian's Death of Actaeon from the collection of the Earl of Harwood to that of J. Paul Getty is seen as a depletion of a certain 'moral energy' and arouses the thought "that a nation which is politically and economically in decline cannot afford to be in decline in that area also."³⁹

Legally and economically country house collections and individual works of art are not entitled to the protection and funds allowed the houses. They can be offered 'in lieu' of estate or inheritance taxes and can then remain in the house if it belongs to the Crown or the National Trust according to the 1953 Finance Act. Otherwise, they are dispersed to museums. The private sale of a work of art to a foreign dealer, museum or collector can be

reversed and export refused if 1) sufficient money can be raised to buy it for the state, 2) it can be demonstrated that the piece is of significant national interest and importance. Since the 1882 Amendment of the Settled Land Acts the private sale of heirlooms and works of art is legal, though often socially unacceptable.

In 1952 the Waverly Report presented the conclusion that "whereas many other states were enforcing rigid export laws to retain as much of their cultural property as was possible, in fact the better policy was to employ export regulations to retain only objects which were of paramount importance to the United Kingdom." ⁴⁰ As a result British law now requires an export permit for works of art one hundred or more years old. Special attention is paid to objects of national importance and such objects can be refused export, as noted above. Their significance is determined by their connection with British history and social life, aesthetic importance and value to scholarly research. If any object of foreign origin over one hundred years old has been in England for fifty years or more and its value exceeds four thousand pounds (1978) an export licence can be refused on the same grounds.

The British government has been accused of indifference and a lack of firm policies to deal with emergencies in spite of these regulations. It is clear to most concerned individuals that the export regulations are thorough enough but that what is in short supply are the funds to match the sale price. It is generally thought that the government should be more enthusiastic and quick

with offers of financial help for important works of art threatened with export. To prevent such sales on the part of owners it has been suggested that the government be more lenient and reasonable in accepting art works 'in lieu' of taxes and should allow more of those to remain in their original setting. Tax breaks for estate owners if their homes are opened to the public and the allowance of tax deductible donations to charities of works of art and objects have been proposed.

A National Heritage Fund separate from the Treasury to "assist with the acquisition of exceptional examples of the national heritage"⁴¹ has also been suggested. In 1977 the Parliamentary Undersecretary of State at the Department of the Environment organized a committee to "establish criteria for preserving historic houses, their parks and contents"⁴² and to compile a list of houses the collections of which should by no means be separated. This is a step in the right direction, but such a committee is too late to save numerous fine collections which have already disappeared.

Despite such pleas for government aid many scholars would like to see less of that sort of intervention and more policies which would encourage self-help and individual effort. There are complaints that "art is increasingly becoming an adjunct to political activity."⁴³ The exclusive ownership of much of Britain's national heritage by the state is regrettable to many for it seems to them to discourage individual interest and involvement and to stifle personal pride and enjoyment of the arts.

Archaeological sites and artifacts, too, are protected by the state and private preservation societies, but to a lesser degree. The National Trust owns many archaeological monuments and areas because they are situated on land associated with a country house. Other sites are not in such close proximity to historic buildings and are considered quite significant by themselves. Stonehenge and the area around it, for example, were bought primarily because of that site's importance whereas numerous barrows, causeways, hill-forts, stone circles, cairns, earth-works, Roman roads, building foundations and once-occupied caves are under the Trust's protection because they are on land near or around a historical site.

The Ancient Monuments and Archaeological Areas Act of 1979 is intended to protect archaeological sites through financial penalties and governmental monitoring of listed monuments. The owner of land on which a listed monument is located must request permission of the Department of the Environment for any construction or similar work near or on the site. If the monument is considered to be of such significance that any alteration of the area would be detrimental the request is denied. The state thus is able to monitor, if not completely control, the welfare of archaeological sites and can minimize or prevent damage to it. This legislation also provides funds for salvage archaeology and prohibits the use of metal detectors by unauthorized persons on the listed sites.

By the middle 1970's the vandalism and looting of

archaeological sites had reached epidemic proportions due to increased public interest in archaeology and the availability of metal detectors. British archaeologists have for some time suggested the nationalization of movable antiquities recovered during excavation so as to prevent their sale or loss by the owners of the land on which they were found. This proposal has meet with quite a bit of opposition "consituting as it does the appropriation of what is generally regarded as private property." ⁴⁴ As in the United States, archaeological sites located on private land cannot be controled by the state. Just as the owner of Great Barrington is not prevented from allowing its deterioration so owners of land encompa ing unlisted sites and monuments cannot be prevented from destroying, pilfering or altering those examples of the National Heritage.

It is noted in a pamphlet provided by the National Trust that by the end of this century only those monuments and sites protected for specific reasons will have survived the onslaught of roads, urban development and vandals. This despite the fact that Britain has had legislation protecting ancient mon ments and archaeological areas since the Ancient Monuments Act of 1882. The simple earthworks, foundations and stone constructions are not as sophisticated and conspicuous as those country houses and their collections but they are as important to understanding the country's history.

France, like Britain, possesses a greater amount of art treasures than the other western European countries as is noted

by preservationists and art historians. The two countries also suffer a similar dearth of private citizens willing to support the arts by enlarging their collections and a shortage of adequately endowed public museums. France also encourages the preservation of its artistic heritage through tax credits, but unlike Britain's 'in lieu' system, art works given to the state are more enthusiastically accepted. This system of dations en paiement, set up in 1972, allows for estate tax credits based on gifts of approved art works to the state. The Code General des Impôts of 1968 allows the payment of inheritance taxes through gifts of art to the state.

Godfrey Barker complains that "In contrast to the puritanical, anti-art feelings which still survive in so many of his British counterparts...the Frenchman views both public and private spending on art as justifiable and natural." ⁴⁵ As a result of such an attitude France's art market is a relatively open one. There are no export taxes but the state can refuse an export licence for any unlisted objects and may then acquire it for a national collection. An export licence is required for any art work valued above five thousand francs (1980) except works no more than twenty years old by a living artist.

It is claimed that France's Comité des Arts organized in 1837, was the first such group in Europe. Its government now contains a Comité interministériel du Patrimoine and a specific individual known as Directeur du Patrimoine. This gentleman estimated in the spring of 1980 that France contained 30,000

protected monuments. The country's recent L'annee du Patrimoine was described by him as a great success. Its purpose was to arouse public interest in and enthusiasm for monuments and art works through programs, demonstrations and tours.

L'inventaire Général des Monuments et des Richesses Artistiques de la France, organized in 1964, is intended to record and so preserve "non seulement les 'trésors inestimables' du patrimoine français, mais aussi les 'richesses mediocres' qui peuvent présenter un intérêt au point de vue de l'histoire de l'art ou l'histoire generale." ⁴⁶ In the face of such enthusiasm Britain should be praised for its relative success in keeping collections together and in their original or traditional location. The French Revolution and Napoleonic Code caused the sale and dispersal of French collections to a degree that prevents the reconstruction of most of them.

Italy is not only the victim of a strong black market in fine arts and antiquities but is crippled by an acute shortage of trained restorers, archaeologists and similar professionals. Almost continuous pillage by foreigners and the fierce pride of its Fascist period have resulted in Italy's present refusal to grant export licences for all types of cultural property, including less important examples. Such decisions are not centrally controlled but are made by local committees and usually without the advice of experts.

In the middle 1970's the abolition of export taxes for objects sold within the European Economic Community removed Italy's

principal means of controlling the export of art objects and artifacts. Taxes on objects sold outside the Community can be fairly easily avoided as can the requirement for export licences.

Because of the uncertainty which surrounds any attempts to protect and preserve the national heritage and the general danger to all objects from black marketeers and other thieves, many small but significant private collections are kept hidden and unavaliable to scholarly study or public viewing. Thus, whether outside or inside the country, much of Italy's cultural property is of no use to all but a few. Barker writes "Thanks to combined official panic and stupidity, much of the Italian patrimony now lies - quite literally - underground."⁴⁷

The federal government of the United States is often praised by Europeans, especially the British, for its policy of allowing income tax deductions for gifts of money or objects to museums and other charities. No export taxes or licences are required and the government will not offer to buy works of art put on the market. Especially valuable art works threatened with the possibility of export must be recovered through public or private action. The federal government will provide no financial assistance.

As a compensation the 'free fine arts' of any other country or period may enter the United States without duty or restrictions. This policy has caused some consternation among other nations since the illegal or unpopular export of their art works is seemingly unnoticed, even encouraged. The United States does require evidence of legal sale of objects but does not otherwise

monitor the import or export of fine arts or antiquities.

Archaeological artifacts, monuments and sites are protected in the United States only so long as they are situated on federally owned land. The Endangered Properties Program and the Archaeological Conservancy of America's National Trust for Historic Preservation which were founded in 1979 can provide some protection by buying land on which sites are located, supervising excavation and preservation and so initiating some degree of private protection. The Archaeological Resources Protection Act of 1979 stipulates a year in prison and a ten thousand dollar fine for the looting or other destruction of a site on federal land and up to five years in prison and a one hundred thousand dollar fine for any subsequent offense. The looting of a site situated on private land is generally considered trespassing, though the artifacts stolen may be of great importance. As in Mexico 'contractors' are beginning to organize large-scale operations on both private and federal lands, especially in the southwest, to retrieve artifacts using bulldozers, explosives and power tools.

One author writes "The tragic and unnecessary losses of houses described in this book demonstrate the results of
48
indifference and neglect." This fact cannot be denied. But neither can it be denied that the various governments' policies and laws and assorted privately run societies and public interest groups should be able to supply adequate protection for the countries' cultural property. Individual responsibility is an integral ingredient in any protection scheme but it has been

largely replaced throughout the world by the opinions of ill-informed committees while the objects themselves are sacrificed to the principles of democratic ownership and free trade. An archaeologist with the National Trust for Historic Preservation has said "The answer is in educating all Americans...about their common responsibilities, as citizens, for these fragile and irreplacable evidences of their cultural heritage." Americans are not the only people who should be so educated. But how do scholars and scientists educate their fellow Americans, Britons, Frenchmen, Italians and Mexicans without cultural resources with which to demonstrate the significance of their cultural history?

Part V

The pillage of works of art and artifacts has a long history. The Romans are well-known for their enthusiastic looting of Greece, among other conquered areas. The Crusades resulted in similar activity as did the Thirty Years War, the reign of Napoleon Bonaparte, the Seige of Peking and the Boxer Rebellion, both World Wars and the Korean and Vietnam Wars to name only a few. All left the defeated or occupied countries stripped of a great deal of their cultural property; much of the rest often mutilated or destroyed. The removal of art and antiquities during peacetime also has a history. Lord Elgin's actions only reflected accepted practice, just as legal sale of cultural material to a foreign collector is acceptable to the modern world. The transaction may be unpopular - as, indeed, that between Lord Elgin and the Turks was - but it cannot be prohibited.

The entire situation of the ownership of art, objects d'art, artifacts, archaeological sites and historic monuments is characterized by just such ambiguity. As mentioned above many believe that the art of a country should be kept as free as possible from governmental involvement. Yet the exchange or restitution of fine arts as a political tool is often implied in UNESCO reports or statements as an incentive and basis for international harmony. Such attitudes may help to save or retrieve the endangered objects but "something is lost when they (fine arts) are employed for social or political reasons. Ideally, intercultural mobility should emerge as a manifestation

of the vitality, pervasiveness and needs of the arts and the artists themselves, without reference to foreign policy." But⁵⁰ art works, monuments, buildings, sites, areas and artifacts need the protection and support that most governments can and do attempt to provide if they are to remain undamaged and accessible.

Similarly, the issue of free trade of such objects and the acute concern voiced frequently over the detrimental effects of an 'art drain' in both developed and developing nations is difficult, if not impossible, to resolve satisfactorily. A prominent American dealer complained in a letter to the editor of Archaeology that since "all that we can do is to encourage the preservation of those works of art and artifacts which miraculously survive the inevitable depredations of our advancing contemporary civilization" we must realize that "in the real world...this is best done by endowing such objects with sufficient monetary value to ensure their preservation."⁵¹ He also claimed that art-rich nations identify as pillaged or stolen any object legally or illegally exported and considers this a selfish 'cultural nationalism'. The dealer has a valid point in that many nations, in their panic or defensive zeal over the situation, are enacting laws which are too rigid and enforcing regulations which prevent the honest and invaluable exchange of cultural information.

Art historians and similar professionals, for their part, realize that "art is a market like any other."⁵² But they, unlike the American dealer see the retention of art works by their country of origin as being of the utmost importance. The question

is ultimately unanswerable since art works and artifacts are valuable to both their country of origin and foreign nations. They are the former's patrimony; to the latter they provide information and so serve as inanimate ambassadors. To both groups they provide aesthetic enjoyment and the source material for scholarly research.

There is even ambiguity surrounding the work and opinions of scholars. They realize the importance of allowing an object to remain 'in situ' and in its country of origin. There, in its original context, artistic and technological relationships and influences can be more clearly seen and the object's, collection's or ruin's integrity left intact. Scholars are also tempted, however, by the possibility of having at their convenient disposal original art works and authentic artifacts. Their work is, without doubt, aided immensely by the proximity of such material. Museums, too, are affected by this duality of outlook.

National governments are also put in a difficult position when dealing with cultural property. They want to preserve their own but simultaneously see the advantages of encouraging free exchange of those materials. Most of the world's nations have fairly strict laws regulating the export of their own cultural property but few, if any, dealing with the import of their neighbors'. Many governments sincerely want to promote cultural exchanges but hesitate to allow examples of their heritage to leave the country on a permanent basis.

It is generally acknowledged by anthropologists that the

arts reflect and reinforce the "basic values of the culture that gave rise to them."⁵³ Works of art are symbolic images of their society's ideals and therefore embody its idealized self-perception. They also serve as a source or testing ground of social innovation or experimentation since they often contain "the expression of some fantasied social situation which will bear a definite relation to the real and desired social situation of the artist and his society."⁵⁴

The motivation behind a nation's zealous protection of its cultural property can be clearly explained in these terms. A great deal of emphasis is placed by British preservationists on the country house as a symbol of a certain lifestyle and the importance of that to the development of British politics, fine arts and general social history. The country house thus symbolizes the security, self-assurance and cultural vitality enjoyed by the original inhabitants of it and serves modern Britons as tangible evidence that those now rare commodities are still available to them. To protect and preserve the country house, then, is to protect and preserve the country's self-confidence and bolster its enthusiasm for cultural growth.

Mexico's Maya heritage also serves as a symbol of cultural vitality and sophistication. In this case the art works, architecture and artifacts remind contemporary Mexicans of an impressive cultural history which can be used by them to symbolize present social development and strength. The modern Mexican is too far removed from the period of great Maya civilization to identify with the

strictly hierarchical, violent values represented in the relief carvings and architectural decoration.

In protecting their national heritage nations are, then, protecting their self-perception and the foundations of their cultural identity. The rise of nationalism can be seen to have encouraged the protection of cultural property while simultaneously gaining strength from an awareness of it.

Societies also wish to preserve their cultural property since to have it replaced by another type or to lose it completely signifies the disappearance of a group's cultural values, its integrity and identity. One could argue, on the basis of its acknowledged role as a mirror of society's values, that the loss or destruction of art is a symbolic expression of political and cultural displacement.⁵⁵ The besieged collections of Britain and the mutilated stelae of Mexico can be, and are, perceived by Britons and Mexicans as evidence of attacks upon their culture and society. To lose art works and artifacts to your neighbor is to suffer not only insult but injury to your cultural identity and resources. Neglect or mutilation of cultural property by the citizenry is also evidence of such displacement since it indicates a lack of respect for the patrimony and for the values it represents.

Nations therefore are attempting to protect and preserve their cultural property not only for aesthetic or scholarly reasons. They are doing so in order to sustain or even re-create a strong, vital self-image. The protection of such property has become of

primary concern to the modern world due to the simultaneous lessening of the economic and political power of the European nations and the growth of nationalism, some economic strength and political independence in developing countries. The developed nations are attempting to preserve a traditional image they have of themselves through the preservation of their past while the developing nations are endeavouring to create a new image out of their dispersed cultural history.

* * *

We are faced with a world of potentially disasterous political tensions, a general social atmosphere of indecision and anxiety and widespread confusion about and disassociation from the roots and direction of our intellectual development. It would seem imperative, therefore, that we begin to systematically preserve our cultural property as well as that of our fellows. For, when the last of it is destroyed or falls into thoughtless hands, we will have lost a goodly portion of our collective soul as well as the seed of that of our children.

Afterword

It will have been noted that there are many aspects of this thesis which would profit from further research and many areas which deserve closer attention. A useful and enlightening study might be made of the full history of antiquities preservation. The world's legislation concerned with cultural property could also be more fully examined and an investigation of the laws' changing nature undertaken. A fuller discussion of the opinions and actions concerning the protection of cultural property of scholars, scientists, collectors and dealers would prove quite interesting. Finally, a study of the fortunes and travels of some specific objects or objects could trace the networks of the art and antiquities trade and the actual operation of the laws, agencies and groups introduced here. It is the author's hope that this thesis will provide a helpful and encouraging basis for such research.

Several of the books found in the following bibliography would be of interest to the concerned but casual reader. The Plundered Past by Karl Meyer and The International and National Protection of Movable Cultural Property by Sharon Williams will provide a comprehensive overview of the subject. The Destruction of the Country House, 1875 to 1975 edited by Roy Strong, Clemency Coggins' "The Maya Scandal - How Thieves Strip Sites of Past Cultures" in Smithsonian and the thirty first volume (1979) of Museum will provide some insight into the nature of the problem of the protection of cultural property.

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PLATE 21 ALTAR 61 AND STELA F, MAN
PALA. COPÁN

FROM. F. ANTON THE ART OF THE MAYA

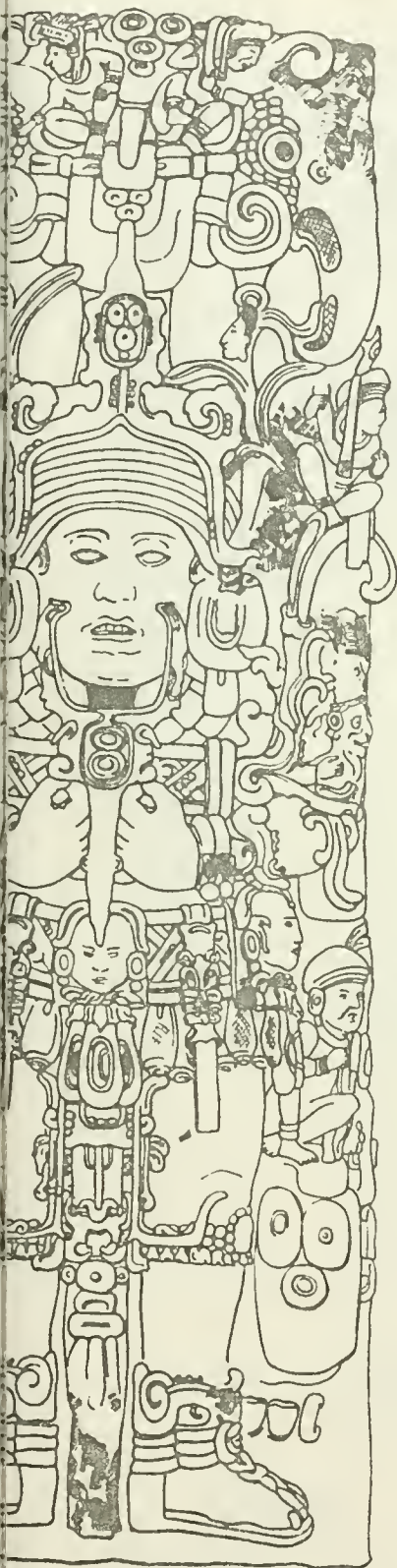


FIG. 20-21 STELAE FROM COPÁN

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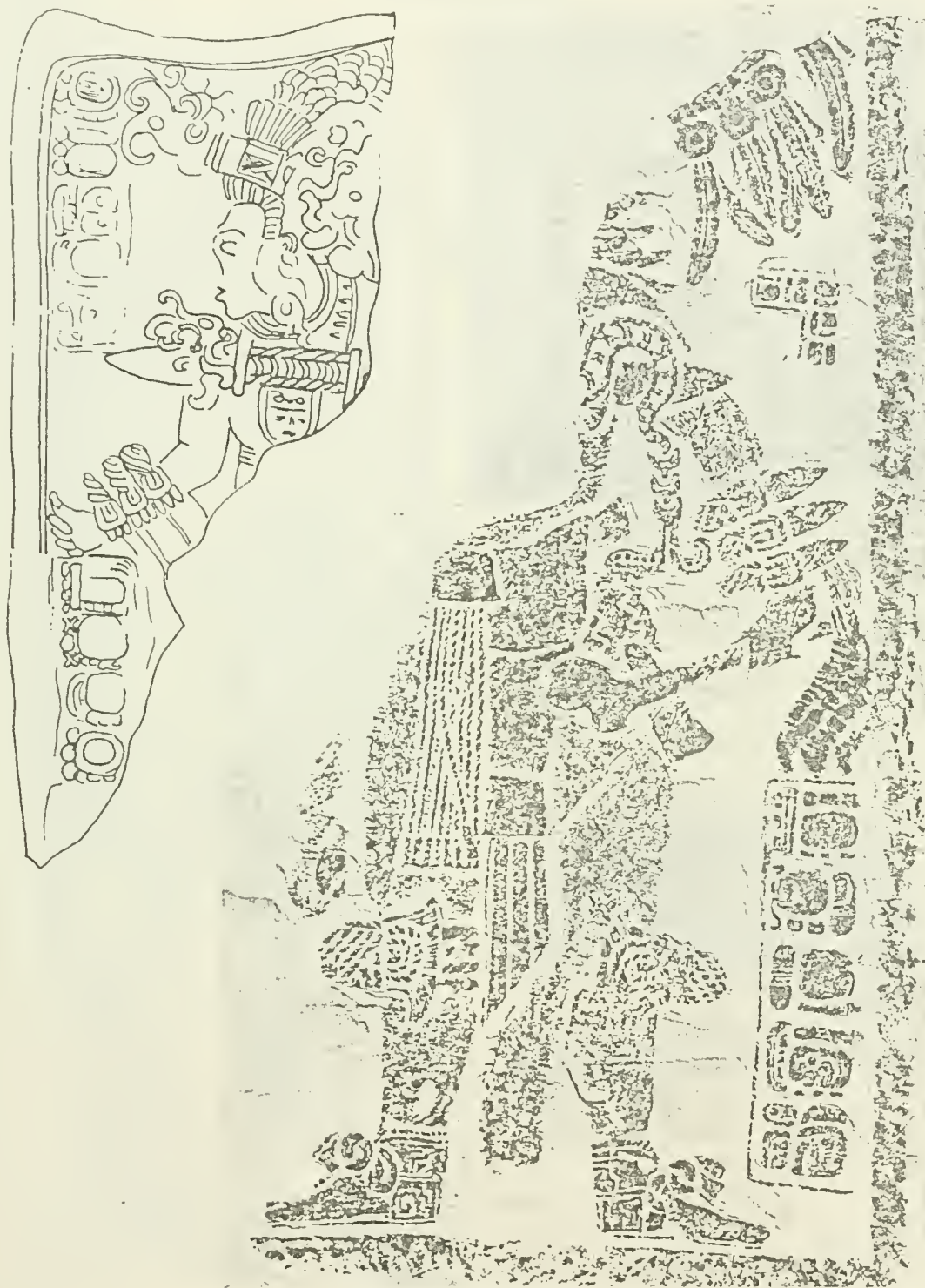


Fig. 3. The upper portion of the Aguas Calientes stela was stolen prior to May, 1969 (line drawing). The rest of the monument, as shown by the rubbing, was stolen shortly before March, 1970.

Robertson

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From M.G. ROBERTSON
"MONUMENT THEVENY IN MESO-AMERICA"



Fig. 4. The entire Yaxchilan stela 18 is shown by piecing together the rubbing of the lower stolen portion and the upper part of the stela which is in the Nacional Museum, Mexico.



Fig. 5. A 3 in thick slab has been sawed off the upper front side of the Jimbal stela.

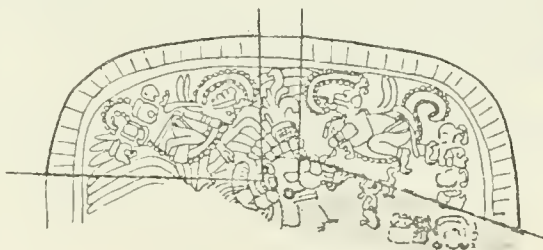


Fig. 6. The fragments of the Jimbal stela will probably be sold in 2 sections, as indicated by the drawing of the upper portion.

FROM M. G. ROBERTSON

"MONUMENT THROUGHOUT IN MESO-AMERICA"

APPENDIX II

UNESCO CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY, ADOPTED BY THE GENERAL CONFERENCE AT ITS SIXTEENTH SESSION, PARIS, 14 NOVEMBER 1970

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 12 October to 14 November 1970, at its sixteenth session, Recalling the importance of the provisions contained in the Declaration of the Principles of International Cultural Co-operation, adopted by the General Conference at its fourteenth session,

Considering that the interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations,

Considering that cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting,

Considering that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export,

Considering that, to avert these dangers, it is essential for every State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations,

Considering that, as cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles,

Considering that the illicit import, export and transfer of ownership of cultural property is an obstacle to that understanding between nations which it is part of Unesco's mission to promote by recommending to interested States, international conventions to this end,

Considering that the protection of cultural heritage can be effective only if organized both nationally and internationally among States working in close co-operation,

Considering that the Unesco General Conference adopted a Recommendation to this effect in 1964,

Having before it further proposals on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, a question which is on the agenda for the session as item 19,

Having decided, at its fifteenth session, that this question should be made the subject of an international convention,

Adopts this Convention on the fourteenth day of November 1970.

Article 1

For the purposes of this Convention, the term "cultural property" means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;

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- (f) objects of ethnological interest, such as:
 - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
 - (ii) original works of statuary art and sculpture in any material;
 - (iii) original engravings, prints and lithographs;
 - (iv) original artistic assemblages and montages in any material;
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture more than one hundred years old and old musical instruments.

Article 2

1. The States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting therefrom.

2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.

Article 3

The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit.

Article 4

The States Parties to this Convention recognize that for the purpose of the Convention property which belongs to the following categories forms part of the cultural heritage of each State:

- (a) Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory;
- (b) cultural property found within the national territory;
- (c) cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the competent authorities of the country of origin of such property;
- (d) cultural property which has been the subject of a freely agreed exchange;
- (e) cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property.

Article 5

To ensure the protection of their cultural property against illicit import, export and transfer of ownership, the States Parties to this Convention undertake, as appropriate for each country, to set up within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions:

- (a) Contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property;
- (b) establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage;
- (c) promoting the development or the establishment of scientific and technical institutions (museums, libraries, archives, laboratories, workshops . . .) required to ensure the preservation and presentation of cultural property;
- (d) organizing the supervision of archaeological excavations, ensuring the preservation "in situ" of certain cultural property, and protecting certain areas reserved for future archaeological research;

- (e) establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules;
- (f) taking educational measures to stimulate and develop respect for the cultural heritage of all States, and spreading knowledge of the provisions of this Convention;
- (g) seeing that appropriate publicity is given to the disappearance of any item of cultural property.

Article 6

The States Parties to this Convention undertake:

- (a) To introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized. The certificate should accompany all items of cultural property exported in accordance with the regulations;
- (b) to prohibit the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate;
- (c) to publicize this prohibition by appropriate means, particularly among persons likely to export or import cultural property.

Article 7

The States Parties to this Convention undertake:

- (a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;
- (b) (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;
- (ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the Cultural property shall be borne by the requesting Party.

Article 8

The States Parties to this Convention undertake to impose penalties or administrative sanctions on any person responsible for infringing the prohibitions referred to under Articles 6 (b) and 7 (b) above.

Article 9

Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.

Article 10

The States Parties to this Convention undertake:

- (a) To restrict by education, information and vigilance, movement of cultural property illegally removed from any State Party to this Convention and, as appropriate for each country, oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording

the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject;

- (b) to endeavour by educational means to create and develop in the public mind a realization of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports.

Article 11

The export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit.

Article 12

The States Parties to this Convention shall respect the cultural heritage within the territories for the international relations of which they are responsible, and shall take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property in such territories.

Article 13

The States Parties to this Convention also undertake, consistent with the laws of each State:

- (a) To prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property;
- (b) to ensure that their competent services cooperate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner;
- (c) to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners;
- (d) to recognize the indefeasible right of each State Party to this Convention to classify and declare certain cultural property as inalienable which should therefore *ipso facto* not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported.

Article 14

In order to prevent illicit export and to meet the obligations arising from the implementation of this Convention, each State Party to the Convention should, as far as it is able, provide the national services responsible for the protection of its cultural heritage with an adequate budget and, if necessary, should set up a fund for this purpose.

Article 15

Nothing in this Convention shall prevent States Parties thereto from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention for the States concerned.

Article 16

The States Parties to this Convention shall in their periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with details of the experience acquired in this field.

Article 17

1. The States Parties to this Convention may call on the technical assistance of the United Nations Educational, Scientific and Cultural Organization, particularly as regards:

- (a) Information and education;
- (b) consultation and expert advice;
- (c) co-ordination and good offices.

2. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative conduct research and publish studies on matters relevant to the illicit movement of cultural property.

3. To this end, the United Nations Educational, Scientific and Cultural Organization may also call on the co-operation of any competent non-governmental organization.

4. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative, make proposals to States Parties to this Convention for its implementation.

5. At the request of at least two States Parties to this Convention which are engaged in a dispute over its implementation, Unesco may extend its good offices to reach a settlement between them.

Article 18

This Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.

Article 19

1. This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.

2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 20

1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited to accede to it by the Executive Board of the Organization.

2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 21

This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

Article 22

The States Parties to this Convention recognize that the Convention is applicable not only to their metropolitan territories but also to all territories for the international relations of which they are responsible; they undertake to consult, if necessary, the governments or other competent authorities of these territories on or before ratification, acceptance or accession with a view to securing the application of the Convention to those territories, and to notify the Director-General of the United Nations Educational, Scientific and Cultural Organization of the territories to which it is applied, the notification to take effect three months after the date of its receipt.

Article 23

1. Each State Party to this Convention may denounce the Convention on its own behalf or on behalf of any territory for whose international relations it is responsible.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation.

Article 24

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the Organization, the States not members of the Organization which are referred to in Article 20, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in Articles 19 and 20, and of the notifications and denunciations provided for in Articles 22 and 23 respectively.

Article 25

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.

2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease

to be open to ratification, acceptance or accession, as from the date on which the new revising convention enters into force.

Article 26

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Done in Paris this seventeenth day of November 1970, in two authentic copies bearing the signature of the President of the sixteenth session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 19 and 20 as well as to the United Nations.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural organization during its sixteenth session, which was held in Paris and declared closed the fourteenth day of November 1970.

APPENDIX VII

TREATY BETWEEN THE UNITED STATES AND MEXICO PROVIDING FOR THE RECOVERY AND RETURN OF STOLEN ARCHAEOLOGICAL, HISTORICAL AND CULTURAL PROPERTIES

Treaty signed at Mexico July 17, 1970;
Ratification advised by the Senate of the United States of America February 10, 1971;
Ratified by the President of the United States of America February 23, 1971;
Ratified by Mexico February 12, 1971;
Ratifications exchanged at Washington March 24, 1971;
Proclaimed by the President of the United States of America April 7, 1971;
Entered into force March 24, 1971.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA A PROCLAMATION

CONSIDERING THAT:

A Treaty of Cooperation between the United States of America and the United Mexican States Providing for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties was signed at the City of Mexico on July 17, 1970, the text of which is hereto annexed;

The Senate of the United States of America by its resolution of February 10, 1971, two-thirds of the Senators present concurring, gave its advice and consent to ratification of the Treaty;

The President ratified the Treaty on February 23, 1971 in pursuance of the advice and consent of the Senate;

The instruments of ratification of the respective Parties were exchanged at Washington on March 24, 1971; and

It is provided in Article VI of the Treaty that it shall enter into force on the day of exchange of the instruments of ratification;

Now, THEREFORE, I, Richard Nixon, President of the United States of America, proclaim and make public the Treaty to the end that it shall be observed and fulfilled with good faith on and after March 24, 1971 by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this seventh day of April in the year of our Lord one thousand nine hundred seventy-one and of the Independence of the United States of America the one hundred ninety-fifth.

RICHARD NIXON

By the President:
William P. Rogers
Secretary of State

TREATY OF COOPERATION BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES PROVIDING FOR THE RECOVERY AND RETURN OF STOLEN ARCHAEOLOGICAL, HISTORICAL AND CULTURAL PROPERTIES

The United States of America and the United Mexican States, in a spirit of close cooperation and with the mutual desire to encourage the protection, study and appreciation of properties of

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archaeological, historical or cultural importance, and to provide for the recovery and return of such properties when stolen, have agreed as follows:

ARTICLE I

1. For the purposes of this Treaty, "archaeological, historical and cultural properties" are defined as

(a) art objects and artifacts of the pre-Colombian cultures of the United States of America and the United Mexican States of outstanding importance to the national patrimony, including stelae and architectural features such as relief and wall art;

(b) art objects and religious artifacts of the colonial periods of the United States of America and the United Mexican States of outstanding importance to the national patrimony;

(c) documents from official archives for the period up to 1920 that are of outstanding historical importance;

that are the property of federal, state, or municipal governments or their instrumentalities, including portions or fragments of such objects, artifacts, and archives.

2. The application of the foregoing definitions to a particular item shall be determined by agreement of the two governments, or failing agreement, by a panel of qualified experts whose appointment and procedures shall be prescribed by the two governments. The determinations of the two governments, or of the panel, shall be final.

ARTICLE II

1. The Parties undertake individually and, as appropriate, jointly

(a) to encourage the discovery, excavation, preservation, and study of archaeological sites and materials by qualified scientists and scholars of both countries;

(b) to deter illicit excavations of archaeological sites and the theft of archaeological, historical or cultural properties;

(c) to facilitate the circulation and exhibit in both countries of archaeological, historical and cultural properties in order to enhance the mutual understanding and appreciation of the artistic and cultural heritage of the two countries; and

(d) consistent with the laws and regulations assuring the conservation of national archaeological, historical and cultural properties, to permit legitimate international commerce in art objects.

2. Representatives of the two countries, including qualified scientists and scholars, shall meet from time to time to consider matters relating to the implementation of these undertakings.

ARTICLE III

1. Each Party agrees, at the request of the other Party, to employ the legal means at its disposal to recover and return from its territory stolen archaeological, historical and cultural properties that are removed after the date of entry into force of this Treaty from the territory of the requesting Party.

2. Requests for the recovery and return of designated archaeological, historical and cultural properties shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, documentation and other evidence necessary to establish its claim to the archaeological, historical or cultural property.

3. If the requested Party cannot otherwise effect the recovery and return of a stolen archaeological, historical or cultural property located in its territory, the appropriate authority of the requested Party shall institute judicial proceedings to this end. For this purpose, the Attorney General of the United States of America is authorized to institute a civil action in the appropriate district court of the United States of America, and the Attorney General of the United Mexican States is authorized to institute proceedings in the appropriate district court of the United Mexican States. Nothing in this Treaty shall be deemed to alter the domestic law of the Parties otherwise applicable to such proceedings.

ARTICLE IV

As soon as the requested Party obtains the necessary legal authorization to do so, it shall return the requested archaeological, historical, or cultural property to the persons designated by the requesting Party. All expenses incident to the return and delivery of an archaeological, historical or cultural property shall be borne by the requesting Party. No person or Party shall have any right to claim compensation from the returning Party for damage or loss to the

archaeological, historical or cultural property in connection with the performance by the returning Party of its obligations under this Treaty.

ARTICLE V

Notwithstanding any statutory requirements inconsistent with this Treaty for the disposition of merchandise seized for violation of laws of the requested Party relating to the importation of merchandise, stolen archaeological, historical or cultural property which is the subject matter of this Treaty and has been seized, or seized and forfeited to the requested Party, shall be returned to the requesting Party in accordance with the provisions of this Treaty. The Parties shall not impose upon archaeological, historical or cultural property returned pursuant to this Treaty any charges or penalties arising from the application of their laws relating to the importation of merchandise.

ARTICLE VI

1. The Parties shall ratify this Treaty in accordance with the provisions of their respective constitutions, and instruments of ratification shall be exchanged at Washington as soon as possible.

2. This Treaty shall enter into force on the day of exchange of the instruments of ratification, and shall remain in force for two years from that date and thereafter until thirty days after either Party gives written notice to the other Party of its intention to terminate it.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, Ambassador Robert Henry McBride for the United States of America and Antonio Carrillo Flores, Secretary of Foreign Relations, for the United Mexican States, duly authorized, have signed this Treaty.

DONE in duplicate, in English and Spanish, in the city of Mexico this seventeenth day of the month of July, nineteen hundred seventy.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA,

ROBERT McBRIDE
Robert Henry McBride
*Ambassador Extraordinary
and Plenipotentiary.*

FOR THE GOVERNMENT OF THE
UNITED MEXICAN STATES,

ANTONIO CARRILLO FLORES
Antonio Carrillo Flores
*Secretary of Foreign
Relations.*

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